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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 8.3.2018

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W.P. (C) 1895/2018 & CM No.7865/2018

ELF CAFE & BAR (A UNIT OF
IN-CULTURE HOSPITALITY)

..... Petitioner

Through: Mr. Prashant Katara and Mr. Soin
Khan, Advs. alongwith Mr. Danish
Wani, AR

versus

SUB DIVISIONAL MAGISTRATE
(S.D.M) & ANR.

..... Respondents

Through: Mr. Shadan Farasat, ASC with Mr.
Shashi Pratap Singh, Adv. for
GNCTD
Mr. B. Mahapatra, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. This is a writ petition which seeks to challenge the order dated 23.9.2017, passed by respondent no.1/Sub Divisional Magistrate, Hauz Khas (SDM).
2. The consequential prayer made by the petitioner is that the SDM be directed to de-seal the concerned unit which is described as: 'Elf Cafe & Bar @ Elf Cafe Lounge, situate at A-26, Second Floor, Hauz Khas Village, New Delhi-110016' (for short 'unit').
3. Notice in this writ petition was issued on 27.2.2018. On that date, Mr. Shadan Farasat accepted notice on behalf of the SDM.
4. Today, Mr. Mahapatra appears on behalf of respondent no.2,

i.e., the Delhi Pollution Control Committee (in short 'DPCC').

5. Mr. Shadan Farasat submits that in view of the fact that the petitioner relies upon an order passed by another Single Judge of this Court dated 7.2.2018, in W.P.(C) No.585/2018, titled: *M/s. Bondstreet Hospitality & Events Pvt. Ltd. vs. Sub Divisional Magistrate (SDM) & Anr.* the respondents do not wish to file a counter affidavit as the stand of the respondents is no different in this case.

6. Briefly, the grievance of the petitioner is that due to the subject unit being sealed, ingress and egress to the concerned premises stands impeded.

7. It is not disputed by the counsel for the respondents that the petitioner has in his possession, the Consent to Establish. According to the respondents what has been revoked is the Consent to Operate.

7.1 Therefore, all that the petitioner seeks in terms of the judgment rendered in *Bondstreet Hospitality* is the de-sealing of the subject unit.

7.2 It is ordered accordingly. The subject unit will be de-sealed by the SDM.

7.3 As is indicated in the matter of *Bondstreet Hospitality* (supra), the fact that de-sealing is ordered would not be taken as if this Court had granted approval to the petitioner to operate the subject unit sans the requisite statutory permissions and/or approvals.

7.4 It is emphasised that the petitioner will not operate the subject unit as a restaurant/eating place till all requisite permissions and approvals are obtained and measures, such as, fire safety protocol etcetera are put in place with the consent of the relevant

statutory authority. An undertaking in that behalf will be filed with the Court within two weeks from today. The SDM will act on the order passed by this Court.

8. The petition and CM No.7865/2018 shall stand disposed of in the aforementioned terms.

9. Dasti.

**RAJIV SHAKDHER
(JUDGE)**

MARCH 08, 2018
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